

evidence in support of the Commissioner's decision. Pierce v. Apfel, 173 F.3d 704, 706 (6th Cir. 1999). The Court also considers whatever in the record fairly detracts from its weight. Id. Resolution of factual conflicts, however, is not for the Court to decide; the ALJ's decision must be upheld if it is supported by substantial evidence. Harwood v. Apfel, 186 F.3d 1039, 1042 (8th Cir. 1999). Determinations of credibility by the ALJ are granted deference so long as they are supported by good reasons and substantial evidence. Gregg v. Barnhart, 354 F.3d 710, 714 (8th Cir. 2003).

Consequently, an administrative decision is not subject to reversal simply because some evidence may support the opposite conclusion. Gwathney v. Chater, 104 F.3d 1043, 1045 (8th Cir. 1997). If the Court finds two inconsistent positions present in the evidence, including one matching the Commissioner's findings, the Court must affirm the decision of the Commissioner. Roth v. Shalala, 45 F.3d 279, 282 (8th Cir. 1995).

ALJ's Credibility Finding

Plaintiff first argues that the ALJ's credibility finding as to Plaintiff's testimony was improper. Plaintiff specifically contends that the ALJ improperly considered Plaintiff's daily activities and incorrectly found that Plaintiff's complaints of debilitating pain were contradicted by the medical records. Although an ALJ may not disregard a claimant's subjective complaints of pain merely because the medical evidence is inconsistent with the claimant's description of the extent and severity of his pain, the ALJ may discount these complaints if there are inconsistencies in the evidence as a whole. Jones v. Callahan, 122 F.3d 1148, 1151 (8th Cir. 1997).

In addition to properly basing his finding on the record as a whole, the ALJ correctly considered Plaintiff's daily activities. See Dukes v. Barnhart, 436 F. 3d 923, 928 (8th Cir. 2006).

An ALJ may consider a claimant's daily activities, and whether they contradict her testimony, in analyzing credibility. See 20 C.F.R. § 404.1529(c)(3)(i); Roe v. Chater, 92 F.3d 672, 677 (8th Cir.1996). In so finding, the ALJ supported his analysis with reference to Plaintiff's testimony that she attended her sons' sporting events at the local YMCA and would go to lunch and water aerobics with a local support group. The ALJ also properly noted that the medical records contradicted Plaintiff's complaints of pain, specifically the findings of recent X-Rays and MRIs. As such, this Court hereby finds that the ALJ properly discredited Plaintiff's credibility. See Pearsall v Massanari, 274 F. 3d 1211, 1218 (8th Cir. 2001).

ALJ's Residual Functional Capacity Finding

As to the ALJ's Residual Functional Capacity ("RFC") finding, Plaintiff first argues that the ALJ adopted an RFC not supported by substantial evidence since it relied upon an incorrect determination as to Plaintiff's mental limitations. Here, the ALJ found that Plaintiff's social activities and lack of medical evidence lead to a finding that Plaintiff's mental impairments are not severe. Jones v. Callahan 122 F.3d 1148, 1153 (8th Cir. 1997). As stated by the ALJ, Plaintiff has not sought any treatment by a mental care professional¹ nor has it impaired her ability to socialize at sports events or support groups. Given that the ALJ properly complied with the process for evaluating mental impairments as described in the applicable regulations, 20 C.F.R. § 404.1520a (1997), the RFC is supported by substantial evidence as to that finding.

Plaintiff also argues that the RFC is not supported by substantial evidence since the ALJ gave improper weight to the opinions of non-examining physicians over Plaintiff's treating physician, Dr. Ellefsen.

¹While Plaintiff is correct that counseling was recommended, there is no evidence that she ever followed through with counseling or therapy.

"A treating physician's opinion is given controlling weight 'if it is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence.'" House v. Astrue, 500 F.3d 741, 744 (8th Cir. 2007). While the ALJ here did give some weight to Dr. Ellefsen's opinion, in that he adopted some of his findings, he did not give controlling weight to the opinion, particularly the finding that Plaintiff could only sit, stand or walk for four hours a day. The ALJ discounted this evidence based on numerous items, including the fact that Dr. Ellefsen had not treated Plaintiff since June 2005 and that it was contradictory to Dr. Miller's findings that Plaintiff was receiving "good results."² See Tr. 323 and 329. Given the above, the Court finds that the ALJ gave the proper weight to the treating physician's opinion.

After careful examination of the record, the Court finds that the ALJ's decision is supported by substantial evidence on the record as a whole. Therefore, the Commissioner's decision denying Plaintiff's disability benefits is AFFIRMED.

Dated: April 24, 2008.

/s/ Dean Whipple
DEAN WHIPPLE
UNITED STATES DISTRICT JUDGE

² While the ALJ's opinion uses the term good relief, the Court notes that this is a typographical error and is without effect.